

*HB 204 House Committee Testimony*

*For the Judiciary Committee – Jan. 21, 2015*

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**Purpose**

Succinctly put, this bill is seeking to put our state on even par with other states in the protection of businesses and organizations that provide recreational services to visitors to Montana.

**History**

Nearly 6 years ago, the Legislature passed the Montana Recreation Responsibility Act codifying for jurists contemporary definitions of inherent risks and defining recreation and sporting activities. This was a crucial piece of legislation, but lacked one critical component, to negate the effects of a judicial opinion prohibiting the use of pre-activity release and waiver documents by recreational service providers.

As a result Dave Leishman, owner of the Bar W guest ranch, and I formed a coalition of like-minded organizations to improve the legal protective climate for Montana businesses, non-profit organizations, and state agencies. Tourism is vital for Montana as is the survival of small businesses. Such a worthy cause has brought together businesses and organizations from many different perspectives to support the passage of sensible legislation.

**Parties Represented**

Our goal was to establish a widespread coalition of non-profits, associations, state agency and commercial service providers. The end result is an impressive representation of just about every type of citizen in Montana; please refer to the ever-growing list of coalition members. We truly believe this legislation is non-partisan in nature.

**Salient Facts**

1. Recreational Service providers are getting squeezed by rising insurance costs, and are constantly in fear of losing insurance all together since there is no legal waiver to protect providers.
2. Some non-profit organizations have stopped providing certain services due to the inability to obtain insurance.
3. Montana needs to allow service providers a legal mechanism to contract with participants pre-activity to agree to share the risk of the activity.

4. You might ask why current law doesn't provide sufficient protection. Currently there is no barrier or consideration for a plaintiff attorney to file a lawsuit. The end result is **regardless if the plaintiff has a case**, they can file a lawsuit, even though they have acknowledged there are inherent risks with outdoor recreation and even agreed to assume those risks and the **insurance companies will simply settle to avoid the high cost of litigating to fruition**.
5. The missing piece in Montana law is they should agree contractually to a release. What "releases" or contractual exculpatory documents do is make the issue of whether the contractual obligation should be upheld subject to summary review and dismissal by the courts; in other words, contractual review is a question of law that a judge can decide. **This will serve as an initial hurdle to prevent unwarranted lawsuits**
6. In the current insurance climate, the Montana judiciary's refusal to recognize a very standard risk shifting device available to commercial recreation operators all over the rest of the country effectively creates an environment insurers are reluctant to enter the Montana market and insurance rates are significantly higher for Montana businesses. **Montana has become an unattractive environment for insurance businesses**, which results in a lack of competition and, again, drives higher rates by fewer companies offering underwriting in our state. Very few programs will stay in business without proper CGL (comprehensive general liability) coverages in place.
7. **We are not seeking to remove injured parties' right to sue**. We agree that when a provider is proven to be guilty of gross negligence or fails to exercise reasonable care in the provision of services as established in common law, a participant should be able to sue. This legislation will not prevent that from happening. However, it is fair to ask the participant to share the responsibility in the case of ordinary negligence, as is the case in all other states other than West Virginia and Louisiana through the use of pre-activity release and waiver contracts.

## Conclusion

*Simply put, passing of this Bill will put Montana on par with other states necessitating litigation brought forth be based on true potential liability versus triggering automatic settlement in fear of the cost of litigation.*

Please support HB 204!